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LEGISLATIVE-EXECUTIVE CONFLICT:  
THE 85TH CONGRESS, PRESIDENT EISENHOWER,  
AND THE DEPARTMENT OF DEFENSE  
REORGANIZATION ACT OF 1958

ROGER C. BOS

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by  
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by  
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Lieutenant Commander, United States Navy

Submitted in partial fulfillment of  
the requirements for the degree of

MASTER OF SCIENCE

IN

MANAGEMENT

United States Naval Postgraduate School  
Monterey, California

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## ABSTRACT

Legislative-executive conflict has been an element of the American system of government since its constitutional birth. Its roots are in the "separation of powers". The author believes that the personal bias and sectional interests of Congress are minimal in this study of Defense Reorganization. The conflict pits the military prestige and voter popularity of President Eisenhower against a conservative Congress jealously guarding its constitutional powers "to raise and support armies"; "to provide and maintain a Navy"; and "to make rules for the Government and Regulation of the land and naval Forces". The study follows developments from the President's first mention of reorganization in his State of the Union Message until the final legislation is signed. The final bill is basically the President's ideas marked with the permanent stamp of Congressional influence.



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## CHAPTER I

### THE PROBLEM

The theory of separated powers is clear and concise. Congress makes the laws and the President administers them. This may have been satisfactory in the nineteenth century, but it cannot be applicable today. The President, with his advisors in the executive department, is now in a better position to recognize the need for, and formulate, comprehensive legislation for the nation. This is especially true in the area of military organization where the President is intimately involved in his role of Commander in Chief. Executive initiative in law making has not evolved with the unconditional endorsement of Congress. It has, in fact, created a gulf between the legislative and executive branches of the national government. This gap, with its roots deeply embedded in the doctrine of separated powers has been a source of rivalry and hostility between Congress and the President at intervals throughout our national history.

#### STATEMENT OF THE PROBLEM

It is the purpose of this study to review the Department of Defense Reorganization Act of 1958, to determine (1) the extent of legislative-executive conflict and (2) the effect the conflict had on the law as enacted.

#### IMPORTANCE OF THE STUDY

Much has been written on the subject of legislative-executive conflict. It is generally exposed against the backdrop of domestic



issues such as the farm problem, civil rights, and other socio-economic problems. This tends to cloud the conflict behind the sectional interests and personal bias of Congress. Granted, these elements can never be completely divorced from any issue, but their influence may be lessened. Assuming sectional interests and personal bias minimal, this study attempts to follow the evolution of the Department of Defense Reorganization Act of 1958, focusing attention on legislative-executive conflict.

#### DEFINITION OF TERMS USED

Legislative. The term legislative, when used as a noun, shall be the Congress, including both the House of Representatives and the Senate.

Executive. Executive shall mean the executive branch of the government, headed by the President and including the Secretary of Defense and his assistants.

Conflict. Conflict is interpreted as meaning the pressures resulting from a clash or divergence of opinions.

#### ROOTS OF CONFLICT

Before proceeding with the specific Department of Defense Reorganization Act of 1958, the roots of legislative-executive conflict should be understood. The Constitution itself is obviously the primary source.

The importance which the framers of the Constitution placed upon the legislative power can be deduced from its dominant position as Article I. Section 1 states:



All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 8 enumerates the specific powers pertinent to military organization.

To raise and support armies...  
To provide and maintain a Navy;  
To make Rules for the Government and Regulation of the land and naval Forces;  
... And  
To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Offices thereof.

The executive power is "vested in a President" in Article II, and in Section 2, the President is given the office of "Commander in Chief of the Army and Navy of the United States."

Congress and the President are therefore independent of each other drawing authority from separate clauses of the Constitution and "acquiring power and influence from separate constituencies through different systems of election".<sup>1</sup> Individual congressmen are primarily local representatives responsible to a local constituency whereas the President is considered to represent the people as a whole.

However, the framers did not contemplate a complete separation.<sup>2</sup> In Article II, Section 3, they expressly directed that the President:

...shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient...

<sup>1</sup>Samuel P. Huntington, The Soldier and the State, (Cambridge: Belknap Press, 1957), p. 401.

<sup>2</sup>George B. Galloway, The Legislative Process in Congress, (New York: Thomas Y. Crowell Company, 1955), p. 438.





The broad language of the Constitution has been responsible for its durability. The broad language of the Constitution has also led to duplication of functions. True to the fears of Madison and Hamilton,<sup>3</sup> Congress has invaded the executive field through intensive investigations, appropriations in specific detail, and public censure of administrative officials. Not foreseen by The Federalist Papers authors was the emergence of the President as a legislative leader. Herman Finer has said:

...the only single legislative program that gives unity, direction, and coherence to the timetable of Congress is the program of work put before it by the President - often in the form of carefully drafted bills.<sup>4</sup>

The President's role as a legislative leader is probably the core of legislative-executive conflict. Harold J. Laski considers it partly a matter of pride. Congress takes orders from no one but itself. He also believes there is a real fear in Congress of being overshadowed by the President.<sup>5</sup>

To enforce alterations is to draw attention to itself... Congress establishes its prestige when it either refuses to let the President have his own way or compels him to compromise with it.<sup>6</sup>

Possibly Lord Bryce has described the inevitability of legislative-executive conflict better than any other. He made the following analogy:

<sup>3</sup>Alexander Hamilton, James Madison, and John Jay, The Federalist Papers, (New York: The New American Library, 1961), No. 48, p. 309, and No. 73, pp. 442-443.

<sup>4</sup>Herman Finer, The Presidency, (Chicago: The University of Chicago Press, 1960), p. 61.

<sup>5</sup>Harold J. Laski, The American Presidency, an Interpretation, (New York: Harper & Brothers, 1940), p. 115.

<sup>6</sup>Ibid



...But there is among political bodies and offices (i.e. the persons who from time to time fill the same office) of necessity a constant strife, a struggle for existence similar to that which Mr. Darwin has shown to exist among plants and animals; and as in the case of plants and animals so also in the political sphere this struggle stimulates each body or office to exert its utmost force for its own preservation...<sup>7</sup>

<sup>7</sup>James Bryce, The American Commonwealth, (New York: the McMillan Company, 1926), Vol. I, pp. 401-2.



## CHAPTER II

### THE STUDY

#### BACKGROUND

"No inhibition had operated more inexorably to limit the pace and nature of (President) Roosevelt's moves to stop Hitler in 1940, and 1941, than his estimate of what the Congress would stand for, or would muster the votes to support if legislation was required."<sup>1</sup> After Pearl Harbor the legislative situation was transformed. Military decisions about military organization and operations could be based solely on military grounds with no consideration for political implications. Of lasting significance was the creation of the Joint Chiefs of Staff. JCS came into being without the benefit of legislation, executive order, or even a letter. When it was finally proposed to legitimize JCS with an executive order, the President "rejected the idea as unnecessary and cramping".<sup>2</sup>

The wartime JCS consisted of the Army Chief of Staff, the Chief of Naval Operations, and the Commanding General of the Army Air Corps with the Chief of Staff to the President, Admiral Leahy, presiding over JCS meetings with no vote. Admiral Leahy's office in the White House greatly facilitated the tendency to by-pass the civilian secretaries of the military departments. Although rivalry and feuds did exist, the wartime operation of the joint chiefs was successful and

<sup>1</sup>Walter Millis, Arms and the State, (New York: The Twentieth Century Fund, 1958), p. 62.

<sup>2</sup>Ibid., p. 105.



good for inter-service cooperation. What one service did, it did as the executive agent carrying out a joint decision.

The prospect of unity in a peace-time economy of limited resources was the problem facing the military after World War II. The really driving force for unification came from the Army Aviators who had public opinion overwhelmingly behind them. Since a separate Air Force could not be denied, the problem became one of organization. The Army, under Secretary Patterson, the Navy, under Secretary Forrestal, and the Congress, all worked up proposals. The final reorganization established was essentially a Patterson/Forrestal compromise modified by Congress to exert their authority.

#### National Security Act of 1947

Official unification began with the National Security Act of 1947. The act created the "National Military Establishment" made up of the three military departments and headed by the Secretary of Defense. It established the Joint Chiefs of Staff to prepare strategic and logistic plans, and serve as chief military advisors to the President and Secretary of Defense. The Joint Chiefs were provided with a Joint Staff of 100 officers. The Secretary of Defense was given only "general direction, authority and control" over the three services. The secretaries of the military departments retained major control over their departments.<sup>3</sup>

<sup>3</sup>"Defense Reorganization Plan Approved", Congressional Quarterly Almanac, (Washington: Congressional Quarterly, Inc., 1958), XIV, p. 134.





### 1949 Amendments

The 1949 Amendments attempted to improve the position of the Secretary of Defense. The "National Military Establishment" became the Department of Defense and the language covering the Secretary's power was altered to "direction, authority, and control" over the three "separately administered" military departments. In addition, the Secretary was given three Assistant Secretaries of Defense. The Joint Chiefs were strengthened with the creation of a non-voting chairman and an enlarged Joint Staff of 210 officers.<sup>4</sup>

### Later Changes

President Eisenhower believed in strong centralized control. One of his first acts after taking office in 1963, initiated Reorganization Plan No. 6. It was designed to further strengthen the top levels of the Defense Department. The Secretary was authorized six additional Assistant Secretaries of Defense and the chain of command to unified commands was firmly established. The chain ran from the President, through the Secretary of Defense and the Secretary of the appropriate military department to the unified commander.<sup>5</sup>

The military organization of the National Security Act as amended was a compromise between the advocates of strong centralized control and the proponents of a decentralized military establishment. In the extreme it was a compromise between the one service, one secretary, one chief of staff philosophy and the philosophy of three services, three secretaries, three chiefs of staff, with no central direction.

<sup>4</sup>Ibid.

<sup>5</sup>Ibid.



In a peacetime environment, the demand for the economic utilization of resources, by itself, was a strong motivator for central direction and control. Congress, however, has always been a conservative body, slow to act on legislation and slow to accept radical change. In the absence of external pressures, it is doubtful that any new attempt at reorganization would have been made.

#### THE SEEDS OF REORGANIZATION

In the fall of 1957, the publicly proclaimed success of Soviet Russia in intercontinental ballistic missile development and production served as the catalyst to focus attention and criticism on military organization. Critics maintained that inter-service rivalry in weapons use and production worked to the advantage of the Soviet Union. Considerable editorializing on a so called "missile-gap" filled the pages of newspapers and periodicals. Undoubtedly President Eisenhower recognized the time as propitious for the introduction of new reorganization legislation.

The President first broached the subject of reorganization in his State of the Union Address in January, 1958. Commenting that he would not pass judgement on the charges of harmful service rivalries, he continued:

Recently I have had under special study with the intimate association of Secretary McElroy (Secretary of Defense) the never ending problem of efficient organization, complicated as it is by the new weapons. Soon my conclusions will be finalized. I shall promptly take such executive action as is necessary and, in a separate message, I shall present appropriate recommendations to the Congress.<sup>6</sup>

<sup>6</sup>New York Times, January 10, 1958.



President Eisenhower, fortunately, was in a unique position to take the role of legislative leader on the subject of military reorganization. He had successfully directed the combined Allied forces against Hitler's Germany in World War II. He was regarded as an expert on all military matters. He enjoyed as much popular support as did Franklin Delano Roosevelt at the height of the "New Deal". However, unlike Roosevelt, he faced a Congress dominated by the opposite political party. His stature as a military leader and his popularity as a President were to be pitted against a conservative, democratic Congress.

With the local constituencies unaffected by a military reorganization, the question of where Congress stood in early 1958, is a matter of speculation. After a Senate Preparedness Subcommittee investigation, Senator Stuart Symington had publicly recommended legislation to unite military command at the top.<sup>7</sup> The opposite view was voiced by Representative Carl Vinson of Georgia, Chairman of the House Armed Services Committee. He declared:

I have not seen one single example of inter-service rivalry with a deleterious effect upon our war efforts.

...Those who seek efficiency and savings in our national military establishment would do well to look at the Department of Defense as a department which is superimposed above the military departments. It has grown from a planning organization to an operational organization.<sup>8</sup>

To support his words with action, Mr. Vinson, with Representative Leslie C. Arends of Illinois, senior Republican member of the Armed

<sup>7</sup>New York Times, January 3, 1958.

<sup>8</sup>New York Times, January 5, 1958.



Services Committee, and Representative Paul J. Kilday of Texas, senior Democrat on the Committee, proposed identical reorganization bills. Their bills called for a drastic reduction in the Secretary of Defense's staff, specific limits on the powers of the Assistant Secretary of Defense (Comptroller), while preserving the basic structure of the department. Since these bills were referred to their own committee and no further action taken, it is probable that this was primarily a political maneuver to officially state their opposition to any pending proposals to increase the authority of the Secretary of Defense.

#### Presidential-Congressional Meetings

With such opposition, it is probable that the administration had difficulty shaping its plan in acceptable language. In order to gauge the opposition, the President held a number of unpublicized meetings with Congressional leaders. Probably the most significant briefing occurred on the night of April 1, when he conferred with Senators Russell and Saltonstall, and Representatives Vinson and Arends, the Chairmen and senior Republicans of the two Armed Services Committees.<sup>9</sup> What discussion transpired in this meeting is not known; but the proposals delivered to Congress two days later must have been based upon the President's estimate of Congressional opposition. He clearly had no intention of sending to Congress proposals which were sure to be defeated.

#### MESSAGE TO CONGRESS

On April 3, the President delivered his long awaited message to

<sup>9</sup>New York Times, April 2, 1958.





Congress. Eisenhower built his proposals on the foundation that:

Separate ground, sea, and air warfare is gone forever. If ever again we should be involved in war, we will fight in all elements, with all services, as one single concentrated effort. Peacetime preparation and organizational activity must be completely unified.<sup>10</sup>

The President's proposals were to:

1. Give the Joint Chiefs of Staff clear cut operational as well as strategic planning responsibilities over unified commands.
2. Grant the Secretary of Defense wider flexibility over appropriations, including the right to transfer funds from one service to another.
3. Remove the Secretaries of the Army, Navy, and Air Force from the chain of command for operational decisions and downgrade the traditional military departments to agencies responsible for training and administration.
4. Strengthen the Joint Chiefs by enlarging the Joint Staff.
5. Create a position of Defense Director of Research and Engineering.
6. Grant the Secretary of Defense a direct role in the appointment of high ranking officers.<sup>11</sup>

#### Congressional Reaction

Congressional reaction against control over appropriations by the Secretary of Defense was immediate and vocal. Representative Kilday said it was "probably greater economic power than should be possessed

<sup>10</sup>New York Times, April 3, 1958.

<sup>11</sup>Ibid.



by one individual". Senator Bridges said it would be a "complete surrender" by Congress of the power of the purse, "and that is one of the few assets we've got up here".<sup>12</sup> This was the prevailing attitude throughout both houses of Congress.

The President failed to consider that the power of the purse constituted Congress' primary tool for the control of Executive action. Viewed as a direct attempt to usurp Congressional power, this proposal received practically all the recorded criticism. If objections to the remaining proposals existed, they did not receive any attention.

The President waited for nearly two weeks before presenting his draft bill to Congress. Possibly the April 3 message was a final attempt to measure his opposition. The real issues would be revealed in the draft bill.

#### PRESIDENT'S DRAFT BILL TO CONGRESS

On April 16, the President sent the draft of his bill to Congress accompanied by a letter. In an apparent attempt to quiet the gathering storm, he pointed out "there were no provisions relating to appropriated funds".<sup>13</sup> By this significant omission, a major obstacle to the President's program dissolved. However, he attempted another route to consolidate the power of the Secretary of Defense. He requested that the Secretary be given the authority to transfer, merge, or abolish roles and missions of the services. This proposal had been conditionally proffered in preliminary meetings with Congressional leaders;

<sup>12</sup>Ibid.

<sup>13</sup>New York Times, April 17, 1958.



rejected when opposition proved strong; and omitted from the earlier message proposals in favor of the "lump-sum" appropriation request. With stronger opposition to the appropriation request, the President may have decided Congress would accept the lesser of two evils.

In addition, the President introduced a new proposal which was destined to become as controversial as the one dropped. He asked for a repeal of Section 3, paragraph (5) of the Unification Act which permitted service secretaries and the Chiefs of Staff to appeal directly to Congress.<sup>14</sup>

A third proposal was also destined to become an issue. In spelling out unified direction, the President requested that wherever the Unification Act called for the services to be "separately administered", the "separately administered" clause be eliminated.<sup>15</sup>

The President's letter emphasized the concept of unity and concluded:

The essence (of unity) can be stated in a nutshell. Unified strategic plans, carried out in peace or war under unified direction, presuppose that the directing head, the Secretary of Defense - Joint Chiefs of Staff mechanism, has sufficient authority over supporting activities to assure execution of the basic plans. This I submit, is the sum total of unification.<sup>16</sup>

Representative Vinson, unaccountably silent after the President's speech on April 3, elected to assail the draft in an hour long speech on the House floor. He took issue with the President's assertion that modern warfare required an extensive revamping at the Pentagon. He argued that "Space ships, satellites, and guided missiles cannot abrogate

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

<sup>16</sup>New York Times, April 17, 1958.



the Constitution of the United States."<sup>17</sup>

In fact, Mr. Vinson based his speech on the Constitutional power of Congress. In his concluding remarks, he said,

I believe that in our form of government, the Executive can have adequate freedom of action in military matters without necessitating an abdication by Congress of its responsibilities.<sup>18</sup>

### The President's Appeal

Excerpts of Mr. Vinson's speech were widely reported. Also considerable editorializing on the President's proposals had transpired. Significantly, the President's first appeal for support came before a joint luncheon meeting of the American Society of Newspaper Editors and the International Press Institute. He called the essence of his program "safety with solvency". After emphasizing possible economies resulting from the reorganization, he answered the popular criticisms of his program. Summing up, he said there would be:

NO single chief of staff;

NO Prussian staff;

NO Czar;

NO forty billion dollar blank check;

NO swallowing up of traditional services;

NO undermining of the constitutional powers of government.<sup>19</sup>

<sup>17</sup>Congressional Record, CIV, p. 6587.

<sup>18</sup>Ibid., p. 6591.

<sup>19</sup>New York Times, April 18, 1958.





## HOUSE ARMED SERVICES COMMITTEE HEARINGS

Wasting little time, the House Armed Services Committee opened hearings on April 21, with Secretary McElroy as first witness. Mr. McElroy, obviously in a conciliatory mood, offered to abandon the Administration request for restricted Congressional access for the chiefs of staff and secretaries. Also, he abandoned the administration argument that an important reason for the program was to effect economies.<sup>20</sup>

Before the committee April 25, Mr. McElroy was agreeable to a sweeping rewriting operation, as long as it preserved the substance of his testimony. He insisted the following provisions be retained:

- (1) That the new law delete provisions that the individual services be "separately administered".
- (2) That the new law remove the 210 man ceiling on the Joint Staff.
- (3) That the secretary be given clearer authority to transfer or abolish roles and missions.<sup>21</sup>

On the question of roles and missions, Charles A. Coolidge, a Secretary of Defense specialist, admitted the present wording of the bill could theoretically lead to the abolition of the Marine Air Arm and the Army's missile activity.<sup>22</sup> However, this intent was emphatically denied by all administration witnesses.

<sup>20</sup>New York Times, April 24, 1958.

<sup>21</sup>Ibid.

<sup>22</sup>New York Times, April 29 and May 3, 1958.



The military witnesses who followed were quizzed thoroughly and critically. As expected, General Nathan F. Twining, Chairman of the JCS (Joint Chiefs of Staff) and General Thomas B. White, Chief of the Air Force, strongly supported the President's program.<sup>23</sup> General Maxwell B. Taylor, Army Chief of Staff also supported the Administration bill. However, Admiral Arleigh A. Burke, Chief of Naval Operations, after supporting the "intent" of the program, confessed misgivings about most of the principal clauses in the bill.

Admiral Burke saw no need to repeal the "separately administered" clauses of the Unification Act. He expressed apprehension over the proposed "transfer of functions" power for the Secretary of Defense. He feared the bill's phraseology would permit significant reductions in Naval Aviation and the Marine Corps. He recommended limits for the new Joint Staff to prevent it from developing into a national general staff.<sup>24</sup>

The final military witnesses were the former Chairmen of the JCS, General of the Army Omar N. Bradley and Admiral Arthur W. Radford. They both strongly endorsed the President's reorganization program. Admiral Radford was concerned that the services might resist change. He concluded his testimony by predicting that the next ten years would bring tremendous changes and the bill "sets the stage for necessary flexibility in the future".<sup>25</sup>

<sup>23</sup>New York Times, May 1, 1958.

<sup>24</sup>New York Times, May 2, 1958.

<sup>25</sup>New York Times, May 1, 1958.



The Committee devoted the majority of its attention to military witnesses. A possible explanation was suggested by Edward L. Katzenbach, Jr. He theorized that the testimony of military witnesses has more meaning for Congressmen than that of high Pentagon Officials.<sup>26</sup> More than one official has served for a relatively short period of time before business or "personal" reasons beckon him back home. The Congressman has usually spent more time on military affairs than has the civilian official.

Throughout the hearings, the civilian and military witnesses had all agreed on one point. Even those supporting the bill conceded that the bill suffered from language trouble which could "pave the way for the sweeping exercise of executive power". Yet, all witnesses agreed that this was not the intent of the Administration.<sup>27</sup>

#### A Related Development

A development related to the hearings came to light on May 7. The President's press secretary acknowledged that the President was waging a letter writing campaign to business friends seeking support for his bill.<sup>28</sup>

In the letter, President Eisenhower suggested that the Department of Defense was analogous to a giant corporation with subordinates reporting independently and directly to the board of directors, by-passing

<sup>26</sup>Edward L. Katzenbach, Jr. "The Pentagon's Reorganization Muddle", Nation 18:14-18, May 15, 1958.

<sup>27</sup>New York Times, May 13, 1958.

<sup>28</sup>New York Times, May 12, 1958.



the chief executive completely. He argued that "this would be completely unworkable" and could not be tolerated in the competitive business world. Of course, the competition facing the Department of Defense was the military might of the Soviet Union. The President concluded his letter with the following plea:

If this little comparison with corporate practices appeals to you as helpful in appreciating the crying need for defense modernization, I hope that you and others will find it useful in awakening the public to the grave seriousness of the matter.<sup>29</sup>

#### House Committee Report

On May 22, the committee on Armed Services presented their bill on reorganization to the House. Committee vote was 37 yeas and no nays.<sup>30</sup>

As expected, the committee approved the non controversial items of the Administration's bill. However, virtually all of the controversial language which would have given the Secretary of Defense sweeping powers over the services was dropped or rewritten. The committee refused to incorporate two changes requested by the President in a letter of May 16.<sup>31</sup>

#### President's Objections

The first major objection dealt with the administrative command channels. The committee had dropped the "separately administered" language, but had substituted, each military department would be "sepa-

<sup>29</sup>New York Times, May 13, 1958.

<sup>30</sup>House Report No. 1765, 85th Congress, p. 40.

<sup>31</sup>Ibid., p. 6.





rately organized under the direction, authority and control of the Secretary of Defense exercised through the respective secretaries of such departments".<sup>32</sup> The President wanted the "exercised through" clause eliminated.

The second objection was the most crucial one. The President was not satisfied with the way the committee had handled the Secretary's power to abolish, merge, or transfer functions. The Committee granted this power, effective after giving thirty days notice to Congress, unless one or more members of the Joint Chiefs objected. If an objection was received, Congress had sixty days in which to pass a concurrent resolution restraining the Secretary from the contemplated action. The President wanted the time limit reduced to a flat thirty days with an act of Congress required to restrain the Secretary.<sup>33</sup>

Since an act would be subject to Presidential veto, this suggestion could never be reviewed by congress favorably.

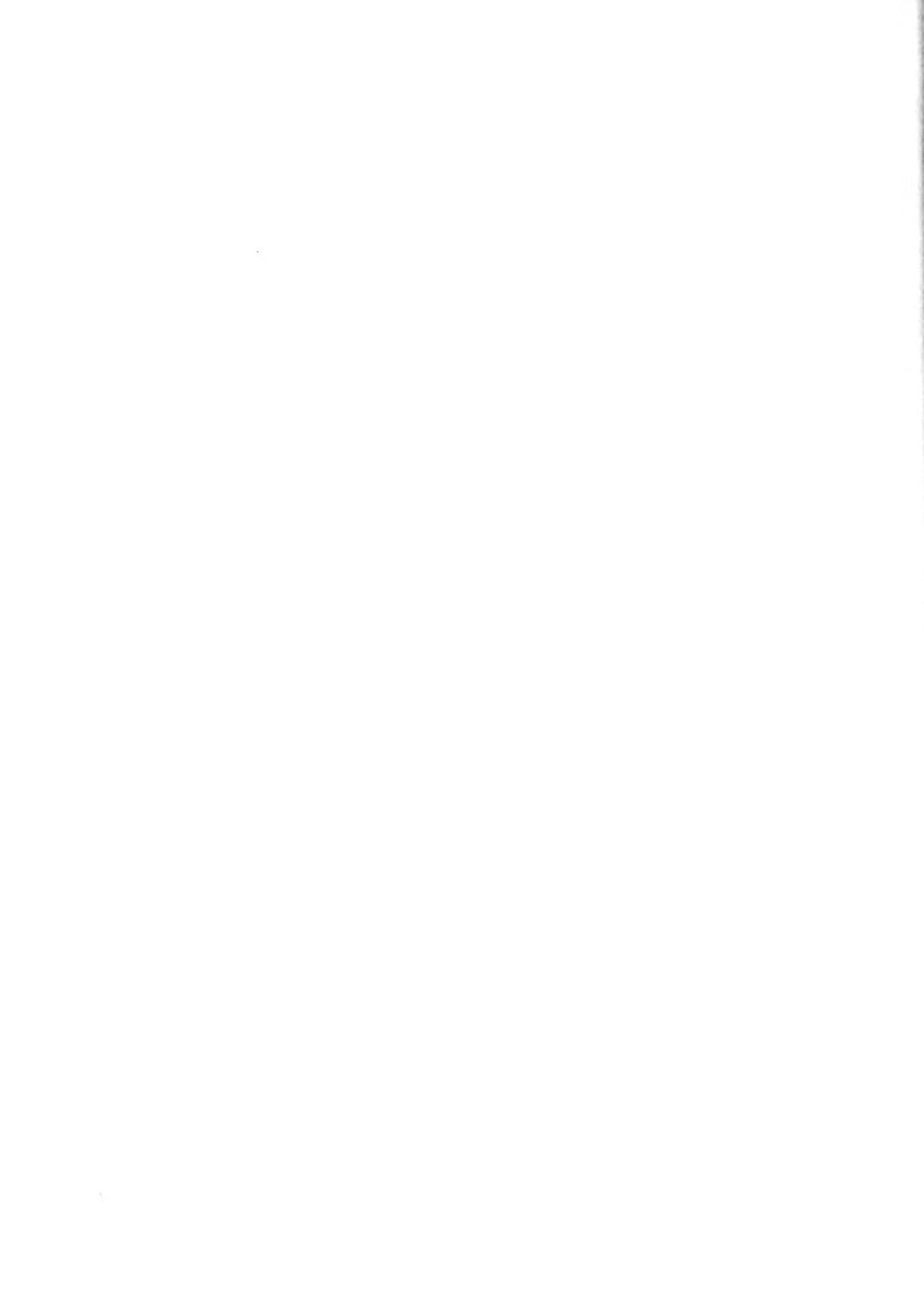
The committee discussed its actions thoroughly in "Report No. 1765". Their concluding arguments were based on Constitutional responsibilities of Congress.

It is apparent that under the constitution, the power of Congress over the Military Establishment is, and was intended to be, complete, save for the power to command the forces they create.

Congress has never considered this responsibility to consist merely in providing funds as requested by the executive branch to be used or held at its discretion. Under this view, Congress

<sup>32</sup>Ibid., p. 46.

<sup>33</sup>New York Times, May 17, 1958.



would be unable to discharge its constitutional responsibilities or to insure that the views of the American people, as expressed by their elected representatives, are observed by the executive branch of the government.<sup>34</sup>

### To the People

With the committee adamant in its stand, the President again took his case to the people in vitriolic language. He considered the clause which required administrative action "through the respective secretaries" as a "legalized bottleneck".<sup>35</sup> On the Secretary's authority to transfer functions, he criticized the power granted to the Joint Chiefs. He argued that the objection of one man would automatically keep any proposed changes tied up for sixty days. He called it an "endorsement of duplication and standpatism in defense".<sup>36</sup>

The President was especially critical that paragraph (5) of section 3 had not been eliminated. This is the paragraph which granted the Joint Chiefs access to Congress. He said the language was best described as "legalized insubordination". He added:

It invites interservice rivalries; invites insubordination to the President and the Secretary of Defense; endorses ideas of disunity and blocking of defense modernization, suggests that Congress hopes for disobedience and interservice rivalries; is bad concept, bad practice, bad influence within the Pentagon.<sup>37</sup>

<sup>34</sup>House Report No. 1765, 85th Congress, p. 40.

<sup>35</sup>New York Times, May 29, 1958.

<sup>36</sup>Ibid.

<sup>37</sup>New York Times, June 7, 1958.



## FLOOR ACTION

Having failed in his attempts with the committee, President Eisenhower was determined to make a strong fight on the floor of the House. On June 6, he invited 15 leading Republican Representatives to breakfast and enlisted their support. The President's tactical maneuver amounted to an announcement that Representative Martin, the Republican floor leader, would introduce new language to deal with the controversial items. Of even greater significance, the New York Times reported that on the day debate of the bill opened, word was passed through the corridors of the House that "Republicans opposing the President on this one would find themselves 'out in the cold' at the White House."<sup>38</sup>

The White House pressure was apparently successful. Starting with Representative Arends, the Republican members of the committee took the floor and after initially lauding the committee bill, recommended recommitment to consider the new language.<sup>39</sup>

The motion to recommit the bill developed into a political power struggle but was rejected by a roll call vote of 192-211. The voting was:

	TOTAL	DEMOCRATS	REPUBLICANS
YEA	192	20	175
NAY	211	196	15

The Bill itself passed on a roll call vote of 402-1.<sup>40</sup>

<sup>38</sup>New York Times, June 2, 1958.

<sup>39</sup>Congressional Record, CIV, pp. 10889.

<sup>40</sup>C.Q. Almanac, op.cit., p. 388.



## SENATE ACTION

The Senate Armed Services Committee, sitting in its customary position of appellate review on legislation originating in the House, opened its hearings on June 17. Listening to the same witnesses who had appeared before the House Committee, the Senate was generally more tolerant of Administration witnesses. One significant clash did occur.

### Secretary McElroy's Mistake

After Admiral Burke had repeated his testimony criticizing the Administration amendments, Secretary McElroy remarked in a press conference:

I am disappointed in him, regard it as regrettable. ...I don't see how a service chief can fail to be aware of the strong interest of the President about these amendments. It seems to me it would be very difficult for a Chief or me to be unaware that the President is Commander in Chief and that he wants these amendments.<sup>41</sup>

Senator Russell took sharp exception with Secretary McElroy's public rebuke of Burke. He suspended further testimony until McElroy furnished "clear and unequivocal" assurance that reprisal action would not be taken for candid opinions expressed to Congress. Russell asserted the McElroy statement was "startling proof" of the necessity for keeping in law the provision that a service chief come to Congress on his own initiative.<sup>42</sup>

<sup>41</sup>New York Times, June 22, 1958.

<sup>42</sup>New York Times, June 25, 1958.





### Senate Version

The Senate version of the House-approved bill, reported July 17, conformed more closely to the President's requests. On the problem of "transferring, abolishing, or merging" functions, it eliminated the provision that any member of the Joint Chiefs could force Congressional review. The Senate version provided that committees of either the Senate or the House would have 30 legislative days to consider any "function" proposal. If a committee of either chamber disagreed with the change, then the Senate or House would have 45 days more to consider it. If a majority of the chamber involved upheld the committee's veto, the recommendation would be negated.<sup>43</sup>

The administrative clause "exercised through" the respective secretaries was amended by striking out the controversial clause.<sup>44</sup>

Section 3 paragraph (5) of the Unification Act remained intact. Direct access to Congress for service secretaries and chiefs of staff was assured.

There was surprisingly little debate on the Senate floor and on July 18, the Department of Defense Reorganization Act passed the Senate, 80-0, exactly as it had been reported by the Committee.<sup>45</sup>

### FINAL ACTION

The bill reported out by the conference committee was essentially the amended bill of the Senate. House conferees did not insist

<sup>43</sup>C.Q. Almanac, op.cit., p. 138.

<sup>44</sup>Ibid., p. 139

<sup>45</sup>Ibid.



on their version because, although some language changes had been made, the intent was still the same.

On July 24, the House and Senate passed the conference report by voice vote and the bill went to the President. On August 6, upon signing the bill into law, the President made the following statement:

I have approved HR 12541, the Department of Defense Reorganization Act of 1958. Its enactment represents a major advance in our organization for defense. While some time will be required for its complete implementation, the Secretary of Defense is beginning this action at once. In order to maintain the proper relationship of the positions of the President, the Congress and the Secretary of Defense, I am instructing the Secretary of Defense that any report to the Armed Services Committees of the Congress as to changes of functions established by law, as prescribed in this act, shall be forwarded first to the President. Now that this measure has become the law of the land, I know that the personnel throughout the military establishment, civilian and military, will cooperate fully with the Secretary of Defense to assure its faithful execution.<sup>46</sup>

<sup>46</sup>Ibid.



### CHAPTER III

#### SUMMARY OF CONCLUSIONS

##### SUMMARY

The Department of Defense Reorganization Act of 1958 provided a classic example of legislative-executive conflict. Congress jealously guarded its constitutional power "to raise and support armies"; "to provide and maintain a Navy"; and "to make rules for the Government and Regulation of the land and naval Forces"; against the attempted inroads of President Eisenhower's reorganization plan. The President used a number of executive ploys in an attempt to enforce his will on the Congress. He repeatedly met with Congressmen; he appealed to the public for support; and he eventually used the threat of withholding political support from opponents of his bill.

The first major victory for Congress resulted from the outcry against "lump-sum" appropriations to the Secretary of Defense. The power of the purse is the most sacred and powerful weapon in the Congressional arsenal. The opposition to such a proposal was so unanimous that the President retreated and did not include it in his draft bill.

If Congress approved the President's plan pertaining to the Secretary of Defense's power to "transfer, merge, or abolish functions" of the military departments, considerable de facto control of the services would have legally passed to the Secretary. Again Congress balked. The final language reserved the ultimate decision for Congress if it wished to intervene.



The considerable controversy over the Secretary's administrative power, especially the "administered through the department secretary" clause, defies comprehension. The House committee made a strong stand on retaining the clause. The Senate committee considered it relatively unimportant and readily eliminated the clause. The conference committee accepted the Senate version with apparently little opposition. House reluctance to accede to the President's desire could have been a stubborn resentment of executive attempts to prescribe the actual language of the bill.

If there ever was a chance that Congress would delete the provision in the National Security Act permitting service Chiefs to appeal to Congress directly, it was permanently eliminated by Secretary McElroy's public rebuke of Admiral Burke. Senator Russell's action suspending the hearings until he received assurance that there would be no reprisals could not have been misinterpreted by the Administration.

#### CONCLUSIONS

Many critics hailed the passage of the bill as a victory for the President. However, the bill that he signed had significant changes from the draft bill he originally submitted. That concessions to more centralized executive authority were made must be attributed to the influence of President Eisenhower. The final bill was definitely a compromise. It embodied the President's ideas with the permanent stamp of Congressional influence.

Has the Act provided a satisfactory framework within which the Department of Defense can operate efficiently? Secretary of Defense





Robert McNamara apparently finds it adequate. His forceful leadership has created some controversy, but nothing requiring Congressional intervention. He has his critics in Congress, but his competence and ability command respect. He has been publicly lauded by Congressional leaders on numerous occasions. Under Mr. McNamara, the Reorganization Act has proved workable and successful.

Even under Mr. McNamara, the question of "how much power for the Secretary of Defense" is not dormant. No less than the Assistant Secretary of Defense (Comptroller) Charles J. Hitch, is on record with the following statement:

Unfortunately the superficial illogicalities of decentralization are more strikingly obvious than the deadening consequences of extreme centralization.<sup>1</sup>

If the man at the helm were other than Mr. McNamara, would the organization still be workable and successful? What if a weak Secretary were appointed who could not provide the leadership the position demands? Or what if an extreme authoritarian Secretary attempted to overstep the lawful constraints of his office? Such situations could develop. If they did, legislative-executive conflict would be unavoidable. The nation received the benefit of a workable Defense Department organization when President Eisenhower challenged the 85th Congress. Will we be as fortunate the next time?

<sup>1</sup>Charles J. Hitch and Roland N. McKean, The Economics of Defense in the Nuclear Age. (Santa Monica: the Rand Corporation, 1960), p. 238.



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